IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7855 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANJAY SHRI SARJUPRASAD KUSHWAHA THRO' WIFE VANDANA

Versus

STATE OF GUJARAT

Appearance:

MR UTPAL M PANCHAL for Petitioner

MR UR BHATT for Respondent NoS. 1,2 and 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 05/09/2000

ORAL JUDGEMENT

The wife of the detenu has filed this writ petition under Art.226 of the Constitution of India, challenging the legality and validity of order of detention dt.5.4.2000 passed by Respondent No.2 against her husband and on that very day, her husband was

detained and taken into custody. The detaining authority passed an order of detention under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short "the Act") branding the detenu as "dangerous person" within the meaning of Sec.2(c) of the Act on the ground that the activities of the detenu are prejudicial to the maintenance of public order.

2. As per the papers of grounds, one criminal case has been registered as CR No.85/2000 for offence punishable under Secs.363, 364, 385 of Indian Penal Code with Umra Police Station on 1st March, 2000. Before passing an order of detention, for arriving at his subjective satisfaction, the detaining authority placed reliance on statements of two anonymous witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act. As per the papers, the sponsoring authority recorded the statements of two witnesses on 21.3.2000 and 22.3.2000 and both the statements were verified by the detaining authority on 30.3.2000 and thereafter the detaining authority passed an order of detention on 5th April, 2000, which is challenged in this writ petition.

3. Though Rule has been served upon each respondent,the respondents have not filed affidavit-in-reply in reply to the Writ Petition by controverting the grounds mentioned in Memo thereof. This Court has, in Special Civil Application No.6322 of 1999 decided on 11.2.2000, deprecated the practice of not filing affidavit-in-reply in such type of cases. Thus, it appears that the respondents have not controverted the grounds under which the said order of detention has been attacked and challenged. Under the circumstances, the order of detention creates a doubt about application of mind on the part of the detaining authority.

4. Mr.U.M.Panchal, the learned advocate for the petitioner has argued that detenu is non-gujarati and he is not knowing Gujarati language, as the detenu is hailing from Bihar State knowing Bihari language only, and therefore, the wife of the detenu on his behalf, made a representation to the respondent no.2 on 26.4.2000 requesting him to supply relevant papers translated into Bihari language so that she can make an effective representation to the State Government. The petitioner has taken up this ground at Para 4 on Page 15 of the main petition. She has stated on oath that the wife of the detenu made a representation to the detaining authority on 26th April, 2000, copy of which is annexed at Annexure `D'. She has further stated that representation was

received in the office of respondent no.2 on 26th April, 2000, but till date of filing this writ petition i.e. on 15th May, 2000, respondent no.2 has neither replied that representation, nor supplied translated copies of the documents as desired in her representation. This fact stated in Para W has ramained uncontroverted. Only on this ground, this petition deserves to be allowed because the detenu has not been given an opportunity of making an effective representation with the help of translated copy of documents to the State Government.

5. Shri Panchal has placed reliance on the case of IBRAHIM AHMED BATTI Vs. STATE OF GUJARAT AND OTHERS, reported in AIR 1982 SC 1500, wherein it has been held as under:-

> "it did not constitute exceptional circumstance justifying the delay in supply of bulk of documents and statements to the detenu in the script or language he understood. It is further held that the Government with all its powers and resources could have arranged to get the documents translated and made available to the detenu within five days."

Here in this case, though the representation was made on 26th April, 2000, the detaining authority has neither replied nor furnished the copies of documents and thus valuable right of the detenu has been violated and, therefore, order which is challenged in this writ petition is bad in law and same is required to be quashed and set aside.

6. In view of what is stated hereinabove, this writ petition is allowed. The order of detention dt. 5th April, 2000, passed by Respondent no.2 with respect to detenu is quashed and set aside. The detenu is ordered to be released forth with, if he is not required to be detained further for any criminal case or proceedings. Rule is made absolute accordingly. Direct Service is permitted.

Date: 05.09.2000. (H.H.MEHTA,J.)
ccshah